

ESTTA Tracking number: **ESTTA96889**

Filing date: **08/29/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91167963
Party	Defendant A Donkey And Goat, LLC A Donkey And Goat, LLC #102 1890 Bryant Street San Francisco, CA 94110
Correspondence Address	J. Scott Gerien Dickenson, Peatman & Fogarty 809 Coombs Street Napa, CA 94559 UNITED STATES tmdept@dpfnapa.com
Submission	Motion to Compel Discovery
Filer's Name	Jaymie Kilgore
Filer's e-mail	tmdept@dpfnapa.com
Signature	/Jaymie Kilgore/
Date	08/29/2006
Attachments	motion-to-compel.pdf ( 41 pages )(1418453 bytes )

Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 8/29/06

By   
Jaymie Kilgore

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Bully Hill Vineyards, Inc.

Opposer,

vs.

A Donkey and Goat, LLC,

Applicant.

Opposition No. 91167963

**MOTION TO COMPEL PRODUCTION  
OF DOCUMENTS**

TO THE COMMISSIONER OF TRADEMARKS:

On January 3, 2006, Applicant served its First Request for Production of Documents on Opposer. A copy of Applicant's requests are attached as Exhibit 1. Opposer responded to these requests on February 8, 2006. A copy of Opposer's responses are attached as Exhibit 2. In its responses, Opposer refused to produce documents responsive to request numbers 1-2, 4-6, and 13-14 on the basis of confidentiality and failed to produce any responsive non-confidential documents. Subsequently, the parties negotiated a stipulated protective order to insure the confidentiality of the documents. On June 20, 2006, counsel for Applicant forwarded a signed copy of the stipulated protective order to counsel for Opposer for his signature and filing. *See* Exhibit 3, attached hereto. Not having received any response or production of documents subsequent to forwarding the stipulated protective order to counsel for Opposer, Applicant's counsel again contacted Opposer's counsel concerning the protective order and response to document requests, but received no response. A copy of Applicant's email to Opposer's counsel

1 is attached hereto as Exhibit 4.

2 In light of Opposer's failure to raise any valid objections to Applicant's requests reflected  
3 in document requests 1-2, 4-6, and 13-14, and Opposer's acknowledgement that the documents  
4 would be produced pursuant to a stipulated protective order, which was provided to Opposer,  
5 Applicant hereby requests that the Board order the production of the requested documents. The  
6 previously-agreed-to protective order can be entered by the Board to address any confidentiality  
7 concerns of Opposer. The documents requested are clearly discoverable as they relate to  
8 Opposer's policing efforts, Opposer's knowledge of third party use of similar marks, and the  
9 weakness of Opposer's mark. Applicant further requests that the Board order that the opposition  
10 be dismissed with prejudice should Opposer fail to produce the requested documents.

11 Applicant's counsel has attempted to contact Opposer's counsel on numerous occasions  
12 concerning the dispute, but to no avail. Accordingly, Applicant requests that an order be entered  
13 compelling Opposer to produce the documents requested in request nos. 1-2, 4-6, and 13-14.

14 Applicant further requests that Opposer be ordered to produce documents responsive to  
15 Document Request No. 3 for "watch notices received by Opposer or its agents related to a GOAT  
16 Mark." Opposer has refused to produce such documents on the basis of privilege as the notices  
17 are issued by Opposer's law firm. *See* Exhibit 2, p. 4. However, Opposer cannot deprive  
18 Applicant information concerning Opposer's knowledge of other "GOAT" marks by hiding such  
19 information behind a claim of privilege as such information is directly relevant to this case as it  
20 relates to Opposer's policing efforts, Opposer's knowledge of third party use of similar marks,  
21 and the weakness of Opposer's mark. Opposer can redact any opinion or analysis counsel may  
22 have provided to Opposer, but the fact that Opposer had notice of a particular third-party  
23 "GOAT" mark is relevant and discoverable and not protectable on the basis of privilege simply  
24 because such factual information was provided to Opposer by its counsel. Accordingly, Opposer  
25 should be required to also produce documents responsive to request no. 3. Applicant's counsel  
26 has conferred with counsel for Opposer on this issue, but Opposer's counsel has maintained the  
27 position that such documents are privileged and has refused to produce them.  
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3 Dated:

8/29/06

DICKENSON, PEATMAN & FOGARTY

4  
5  
6 By

J. Scott Gerfen

Megan Healy

809 Coombs Street

Napa, California 94559

Telephone: 707-252-7122

Facsimile: 707-255-6876

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11 Attorneys for Applicant,

12 A DONKEY AND GOAT, LLC  
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**PROOF OF SERVICE**

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 809 Coombs Street, Napa, California 94559. On August 29, 2006, I served the attached **MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

on the person(s) listed below:

Brian M. Gaynor, Esq.  
Baker & Rannells  
626 North Thompson Street  
Raritan, NJ 08869

by enclosing a true copy in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. The persons served are as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 29, 2006, at Napa, California.

  
JAYMIE KILGORE

## **EXHIBIT 1**

1 J. SCOTT GERIEN, State Bar No. 184728  
2 DICKENSON, PEATMAN & FOGARTY  
3 809 Coombs Street  
4 Napa, California 94559  
5 Telephone: (707) 252-7122  
6 Facsimile: (707) 255-6876

7 Attorneys for Applicant  
8 A DONKEY AND GOAT, LLC

9 UNITED STATES PATENT AND TRADEMARK OFFICE  
10 TRADEMARK TRIAL AND APPEAL BOARD

11 Bully Hill Vineyards, Inc.

12 Opposer,

13 vs.

14 A Donkey and Goat, LLC,

15 Applicant.

Opposition No. 91167963

**APPLICANTS'S FIRST SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS**

16 PROPOUNDING PARTY: Applicant, A Donkey and Goat, LLC

17 RESPONDING PARTY: Opposer, Bully Hill Vineyards, Inc.

18 SET NO: One

19 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Applicant, A Donkey and  
20 Goat, LLC ("Applicant") submits to Opposer, Bully Hill Vineyards, Inc. ("Opposer"),  
21 Applicant's First Set of Requests for Production of Documents and Things. These document  
22 production requests are to be responded to separately and fully no later than thirty (30) days after  
23 receipt. The documents requested herein should be produced within thirty days at the offices of  
24 Dickenson Peatman & Fogarty, 809 Coombs Street, Napa, California 94559, or at such other  
25 location as may be agreed upon by counsel for the parties.  
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APPLICANT'S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND THINGS

## DEFINITIONS AND INSTRUCTIONS

For the convenience of counsel, and the Board, it is requested that each numbered request be answered by repeating each numbered request in its entirety and following each said request with the corresponding answer.

If Opposer knows of the existence, past or present, of any documents and things described below, but is unable to produce such documents and things because they are not presently in its possession, custody or control, it shall so state and shall identify such documents and the name and address of the person who has possession, custody or control of the documents and things.

These requests shall be deemed to be continuing within the meaning of Federal Rule of Civil Procedure 26(e) so as to require supplemental production of documents and things if Opposer discovers responsive documents and things after the date for response hereto despite a diligent effort to provide all responsive documents and things within the time specified under Rule 34.

In answering the requests, Opposer shall furnish all documents and information which are available to it, including documents and information in the possession, custody or control of its present and former agents, employees, officers, directors, attorneys, accountants, investigators, experts, and all other persons acting or purporting to act on Opposer's behalf or under its control.

The terms "you" or "your" means and shall refer to Opposer Bully Hill Vineyards, Inc. and any affiliated corporations or entities, including parent and/or subsidiary corporations, divisions, predecessors, partners, directors, officers, employees, agents and attorneys and each person acting on his behalf or under its control.

The term "Applicant" shall refer to A Donkey and Goat, LLC

The term "person" means and includes, without limiting the generality of its meaning, every natural person, corporate entity, sole proprietorship, partnership, association, governmental body or agency.

The term "organization" means entities including domestic or foreign, public or private corporations, partnerships or sole proprietorships, as well as other business organizations, associations, forms, trusts, or legal entities or persons.



1           The terms "documents" and "things" are used in their broadest sense and include, without  
2 limitation, the original and all non-identical copies (including those with any notations) of the  
3 following items of which Opposer has knowledge, and/or which are in the possession or under the  
4 control of Opposer, or the agents, attorneys, officers, employees, or other representatives of  
5 Opposer: agreements and contracts; assignments; licenses; correspondence; reports, notes and  
6 memoranda; summaries, minutes, notes and records of telephone conversations, meetings and  
7 conferences; reports and/or summaries of investigations; opinions and reports of experts and  
8 consultants; statements of persons having knowledge of relevant facts; cablegrams and telex  
9 messages; patents, registrations of service or trademarks, copyrights and applications for each of  
10 them; sales records, including purchase orders, order acknowledgments and invoices; books of  
11 account; statements, bills, checks and vouchers; brochures, pamphlets, catalogs, sales literature,  
12 point-of-purchase displays and sales promotion material; advertisements; trade letters, notices and  
13 announcements; press releases and media coverage; specification sheets and diagrams; warranty  
14 forms; photographs; artwork, sketches, layouts, designs, mock-ups and prototypes; in all forms,  
15 including two-dimensional and three-dimensional items, audio, video and multi-media formats,  
16 all information recorded or saved in any electronic, magnetic, digital, or other format for use in  
17 conjunction devices such as computers, and all writings as that term is defined by Rule 1001 of  
18 the Federal Rules of Evidence.

19           The term "communication" means any exchange of information other than in writing,  
20 including, without limitation, telephone conversations, oral conversations and meetings.

21           The terms "relate to" or "relating to" shall mean directly or indirectly mentioning or  
22 describing, pertaining to, being connected with, or reflecting upon a stated subject matter.

23           The term "mark" shall mean any word, phrase, symbol, or design, or any combination of  
24 words, phrases, symbols and/or designs, including without limitation logos and stylized  
25 letterforms, used to identify and distinguish the source of goods and/or services.

26           The term "GOAT Mark" shall mean the term "GOAT" or the image of a goat as used by  
27 any party in association with goods or services appearing in any form or type style, with or  
28 without additional words, designs or logos..

1 The term "commerce" means all commerce which may be lawfully regulated by the  
2 Congress of the United States of America.

3 The term "any" includes both "any" and "every."

4 The terms "and" as well as "or" are to be read in both the conjunctive and disjunctive and  
5 shall serve as a request for information which would be responsive under a conjunctive reading in  
6 addition to all information which would be responsive under a disjunctive reading.

7 The singular shall include the plural and vice versa, and words in one gender shall include  
8 the other gender.

9 References to any person, entity or party herein includes his or her agents, attorneys,  
10 employees, officers, directors or others acting on behalf of said persons or parties.

11 If Opposer refuses to produce any document coming within the scope of the following requests on  
12 the basis of attorney-client privilege, work product privilege, or any other privilege, as to each  
13 such claim: (a) identify each such document and/or communication; (b) identify each recipient of  
14 the document; and (c) state the basis upon which the privilege or ground for exclusion is claimed.

#### 15 16 DOCUMENT REQUESTS

17 **Request No. 1:** All documents evidencing Opposer's objection to the use of a GOAT  
18 Mark by another party.

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20 **Request No. 2:** All documents evidencing Opposer's knowledge of the use of a GOAT  
21 Mark by another party.

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23 **Request No. 3:** All watch notices received by Opposer or its agents related to a GOAT  
24 Mark.

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26 **Request No. 4:** All agreements entered into by Opposer related to the use of a GOAT  
27 Mark by another party, including, but not limited to, any such agreements between Opposer and  
28 The Fairview Trust, Trustees of the Fairview Trust, Harvey Fresh (1994) Ltd., Norman Yost,

1 Dolan & Sons, Churchill and Carr Limited, Foster's Wine Estates Americas Company, Beringer  
2 Blass Wine Estates Company or Endeavour Wines Pty Ltd.

3  
4 **Request No. 5:** All correspondence between Opposer, or its attorney or its agents, and  
5 The Fairview Trust or the Trustees of the Fairview Trust, or their attorneys or agents, relating to a  
6 GOAT Mark.

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8 **Request No. 6:** All correspondence between Opposer, or its attorney or its agents, and  
9 Harvey Fresh (1994) Ltd., or its attorneys or agents, relating to a GOAT Mark.

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11 **Request No. 7:** All correspondence between Opposer, or its attorney or its agents, and  
12 Norman Yost, or his attorneys or agents, relating to a GOAT Mark.

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14 **Request No. 8:** All correspondence between Opposer, or its attorney or its agents, and  
15 Dolan & Sons, or its attorneys or agents, relating to a GOAT Mark.

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17 **Request No. 9:** All correspondence between Opposer, or its attorney or its agents, and  
18 Churchill and Carr Limited, or its attorneys or agents, relating to a GOAT Mark.

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20 **Request No. 10:** All correspondence between Opposer, or its attorney or its agents, and  
21 Foster's Wine Estates Americas Company, or its attorneys or agents, relating to a GOAT Mark.

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23 **Request No. 11:** All correspondence between Opposer, or its attorney or its agents, and  
24 Beringer Blass Wine Estates Company, or its attorneys or agents, relating to a GOAT Mark.

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26 **Request No. 12:** All correspondence between Opposer, or its attorney or its agents, and  
27 Endeavour Wines Pty Ltd, or its attorneys or agents, relating to a GOAT Mark.

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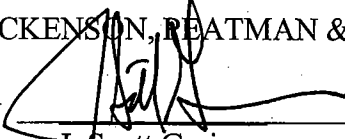
**Request No. 13:** All documents and things which refer or relate to Applicant.

**Request No. 14:** All documents and things on which you intend to rely in prosecuting this opposition action.

Dated: 1/3/06

DICKENSON, BEATMAN & FOGARTY

By

  
J. Scott Gerien  
809 Coombs Street  
Napa, California 94559  
Telephone: 707-252-7122  
Facsimile: 707-255-6876

Attorneys for Applicant,  
A DONKEY AND GOAT LLC

**PROOF OF SERVICE**

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 809 Coombs Street, Napa, California 94559. On January 3, 2006, I served the attached **APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

on the person(s) listed below:

Stephen L. Baker, Esq.  
Baker and Rannells PA  
626 North Thompson Street  
Raritan, NJ 08869

by enclosing a true copy in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. The persons served are as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed January 3, 2006, at Napa, California.

  
JAYMIE KILGORE

## **EXHIBIT 2**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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BULLY HILL VINEYARDS, INC.

Opposer,

v.

A DONKEY AND GOAT, LLC

Applicant.

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Cancellation No. 91167963  
Mark: A DONKEY AND GOAT  
Ser. No. 78500649  
Filed: October 15, 2004

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF  
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

**Preliminary Statement**

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Opposer at the present state of this proceeding. Accordingly, Opposer reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

**GENERAL OBJECTIONS**

1. The following responses are provided subject to, and without waiving:
  - (a) all objections as to competency, relevancy, materiality, privilege or admissibility;
  - (b) all objections to the use of any responses, documents or the subject matter thereof in any subsequent proceeding;
  - (c) all objections to future interrogatories, on the same or different subject matter; and
  - (d) the right at any time to modify, correct, supplement, clarify or change any of the responses set forth herein.

2. Opposer objects to the interrogatories to the extent that they call for privileged information, including, without limitation, documents that were developed for, or in anticipation of, litigation, or which constitute attorney work product or confidential attorney-client communications.

3. Opposer objects to so much of the "Instructions" and "Definitions" set forth in the Request as may exceed the provisions of the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

4. Opposer objects to Applicant's interrogatories to the extent that they seek documents or information which are privileged, are protected by the attorney-client privilege or other privileges, or constitute work product. In responding to these interrogatories, Opposer does not waive, but preserves, all such privileges.

5. Opposer's responses are without prejudice to its right to object to admission into evidence of any information provided or documents produced pursuant to these interrogatories or its right to object to further discovery relating to the same subject upon any valid ground.

6. Opposer objects to the definition of "Identify" when used with reference to natural persons as being overly broad. Where natural persons are identified, they will be identified with sufficient information (if known) to enable Applicant to locate and contact such persons.

7. Opposer objects to the definition of "Identify" when used with reference to documents, as being overly broad. Where documents are identified, they will be identified with sufficient specificity to enable Applicant to request the same pursuant to a request for documents.



8. Opposer objects to the definition of "Opposer" or "you" or "your" to the extent it includes "predecessors", "officers", "partners", "directors", "agents", "attorneys", "employees", "parent and/or subsidiary corporations", "affiliated corporations or entities", and "divisions". Opposer is under no obligation to serve each of the persons/entities referred to in the definition and Opposer is only obligated to produce information and documents under its possession or control.

9. All the responses hereinafter set forth are subject to the general objections.

**Document Request No. 1**

All documents evidencing Opposer's objection to the use of a GOAT Mark by another party.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, Opposer states that representative non-privileged documents will be made available for inspection and copying at Opposer's offices, or another location mutually agreed upon by the parties, upon Applicant making suitable and reasonable arrangements with Opposer's attorneys only upon the entry of a suitable Protective Order.

**Document Request No. 2**

All documents evidencing Opposer's knowledge of the use of a GOAT Mark by another party.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, Opposer states that representative non-privileged documents will be made available for inspection and copying at Opposer's offices or another location mutually agreed upon by the parties upon Applicant making suitable and reasonable arrangements with Opposer's attorneys only upon the entry of a suitable Protective Order.

**Document Request No. 3**

All watch notices received by Opposer or its agents related to a GOAT Mark.

**Response:**

Opposer does not receive trademark watch notices from any outside parties. All watch service notices are issued by Baker & Rannells PA, and are thus protected from disclosure by the attorney-client privilege.

**Document Request No. 4**

All agreements entered into by Opposer related to the use of a GOAT Mark by another party, including, but not limited to, any such agreements between Opposer and The Fairview Trust, Trustees of the Fairview Trust, Harvey Fresh (1994) Ltd., Norman Yost, Dolan & Sons, Churchill and Carr Limited, Foster's Wine Estates Americas Company, Beringer Blass Wine Estates Company or Endeavor Wines Pty Ltd.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, Opposer states that representative non-privileged, non-confidential documents will be made available for inspection and copying at Opposer's offices or another location mutually agreed upon by the parties upon Applicant making suitable and reasonable arrangements with Opposer's attorneys only upon the entry of a suitable Protective Order. With respect to agreements between Norman Yost, Dolan & Sons, Churchill and Carr Limited, Foster's Wine Estates Americas Company, Beringer Blass Wine Estates Company or Endeavor Wines Pty Ltd., no responsive documents exist.

**Document Request No. 5**

All correspondence between Opposer, or its attorneys or its agents, and The Fairview Trust or Trustees of the Fairview Trust, or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, Opposer states that representative non-privileged, non-confidential documents will be made available for inspection and copying at Opposer's offices or another location mutually agreed upon by the parties upon Applicant making suitable and reasonable arrangements with Opposer's attorneys only upon the entry of a suitable Protective Order.

**Document Request No. 6**

All correspondence between Opposer, or its attorneys or its agents, and Harvey Fresh (1994) Ltd., or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, Opposer states that representative non-privileged, non-confidential

documents will be made available for inspection and copying at Opposer's offices or another location mutually agreed upon by the parties upon Applicant making suitable and reasonable arrangements with Opposer's attorneys only upon the entry of a suitable Protective Order.

**Document Request No. 7**

All correspondence between Opposer, or its attorneys or its agents, and Norman Yost, or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, no responsive documents exist.

**Document Request No. 8**

All correspondence between Opposer, or its attorneys or its agents, and Dolan & Sons, or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, no responsive documents exist.

**Document Request No. 9**

All correspondence between Opposer, or its attorneys or its agents, and Churchill and Carr Limited, or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, no responsive documents exist.

**Document Request No. 10**

All correspondence between Opposer, or its attorneys or its agents, and Foster's Wine Estates Americas Company, or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, no responsive documents exist.

**Document Request No. 11**

All correspondence between Opposer, or its attorneys or its agents, and Beringer Blass Wine Estates Company, or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, no responsive documents exist.

**Document Request No. 12**

All correspondence between Opposer, or its attorneys or its agents, and Endeavour Wines Pty Ltd, or its attorneys or agents, relating to a GOAT Mark.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, no responsive documents exist.

**Document Request No 13**

All documents and things which refer or relate to Applicant.

**Response:**

Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every

General Objection, Opposer states that representative non-privileged, non-confidential documents will be made available for inspection and copying at Opposer's offices or another location mutually agreed upon by the parties upon Applicant making suitable and reasonable arrangements with Opposer's attorneys only upon the entry of a suitable Protective Order.

**Document Request No.14**

All documents and things on which you intend to rely in prosecuting this opposition action

**Response:**

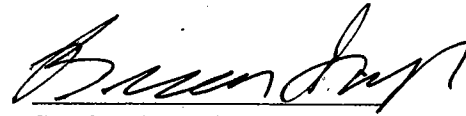
Opposer objects to this request on the grounds that it is overbroad and unduly burdensome and/or requests documents that are protected by the attorney-client privilege and/or the attorney work product privilege and/or contain confidential business information. Without waiver of and subject to the above objections and each and every General Objection, Opposer states that representative non-privileged, non-confidential documents will be made available for inspection and copying at Opposer's offices or another location mutually agreed upon by the parties upon Applicant making suitable and reasonable arrangements with Opposer's attorneys only upon the entry of a suitable Protective Order.



Dated: February 8, 2006

BAKER AND RANNELLS, PA

By:



Stephen L. Baker

Brian M. Gaynor

Attorneys for Opposer

626 North Thompson Street

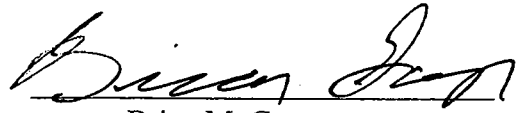
Raritan, New Jersey 08869

(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer's Responses to Applicant's First Set of Requests for Production Of Documents and Things to Applicant in re: Bully Hill Vineyards, Inc. v. A Donkey and Goat, LLC, Cancellation No. 91167963, was served on counsel for Applicant, this 8<sup>th</sup> day of February, by sending same via Federal Express, postage prepaid, to:

DICKENSON, PEATMAN & FOGARTY  
Attn: J. Scott Gerien  
809 Coombs Street  
Napa, California 94559

  
Brian M. Gaynor

### **EXHIBIT 3**

## Scott Gerien

---

**From:** Scott Gerien  
**Sent:** Tuesday, June 20, 2006 2:18 PM  
**To:** 'b.gaynor@br-tmlaw.com'  
**Subject:** RE: Opposition No. 91167963 Bully Hill Vineyards, Inc. v. A Donkey and Goat, LLC

**Attachments:** jkilgore - 06-20-06 - R4R6SRR.pdf



kilgore - 06-20-06 -  
R4R6SRR....

Brian:

Attached is the stipulated protective order with my signature. In light of the upcoming discovery deadline I was wondering when we may expect to receive the responsive documents. If it will not be prior to the discovery deadline, I propose we extend the deadline by a month so that we may have the chance to review the documents. Please let me know if this is acceptable.

Sincerely,  
Scott

-----Original Message-----

**From:** Brian Gaynor [mailto:b.gaynor@br-tmlaw.com]  
**Sent:** Monday, May 01, 2006 2:45 PM  
**To:** Scott Gerien  
**Subject:** RE: Opposition No. 91167963 Bully Hill Vineyards, Inc. v. A Donkey and Goat, LLC

Sorry about that. Long day!

Brian M. Gaynor, Esq.  
BAKER AND RANNELLS PA  
ATTORNEYS AT LAW  
626 NORTH THOMPSON STREET  
RARITAN, NEW JERSEY 08869  
TELEPHONE 908-722-5640  
FAX 908-725-7088  
E-mail: b.gaynor@BR-tmlaw.com

This email is confidential and may be legally privileged. If you received it in error, please notify us immediately. If you are not the intended recipient, you should not copy it, disclose its contents to others, or use it for any purpose.

-----Original Message-----

**From:** Scott Gerien [mailto:Sgerien@dpfnapa.com]  
**Sent:** Monday, May 01, 2006 5:14 PM  
**To:** b.gaynor@br-tmlaw.com  
**Subject:** RE: Opposition No. 91167963 Bully Hill Vineyards, Inc. v. A Donkey and Goat, LLC

No attachment.

-----Original Message-----

**From:** Brian Gaynor [mailto:b.gaynor@br-tmlaw.com]  
**Sent:** Monday, May 01, 2006 2:06 PM  
**To:** Scott Gerien  
**Subject:** Opposition No. 91167963 Bully Hill Vineyards, Inc. v. A Donkey and Goat, LLC

Dear Mr. Gerein,

My apologies for the delay in responding to your letter dated February 23.

Attached, please find a draft Protective Order, as you requested. Please review, and if acceptable, sign in the appropriate place and return to me.

With respect to Document Request No. 3, while you are correct that search reports are discoverable under TBMP 414.6, we disagree that watch notices are equivalent to search reports. There is no authority for this proposition. Watch notices performed by this firm constitute legal advice, and are thus privileged and will not be produced. Furthermore, watch notices are evidence of neither use nor registration, so TBMP 414.9 is not applicable.

Brian M. Gaynor, Esq.  
BAKER AND RANNELLS PA  
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626 NORTH THOMPSON STREET  
RARITAN, NEW JERSEY 08869  
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E-mail: b.gaynor@BR-tmlaw.com

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

---

BULLY HILL VINEYARDS, INC.

Opposer,

v.

A DONKEY AND GOAT, LLC

Applicant.

---

Cancellation No. 91167963

Mark: A DONKEY AND GOAT

Ser. No. 78500649

IT IS HEREBY STIPULATED AND AGREED by and between the parties, that, pursuant to § 2.125(e), Trademark Rules of Practice, and Rule 26(c), Fed. R. Civ. P., during the course of this action, with respect to any documents or information received by any party to this action in response to any document request, interrogatory, deposition or otherwise which contains or comprises confidential or proprietary information, the following procedures shall be employed and the following restrictions shall govern:

1. Any document, response to interrogatory, deposition transcript or portion of a deposition transcript, response to requests for admission or other material or portion thereof (hereinafter collectively "MATERIAL") believed, in good faith, by the party producing the MATERIAL to contain information which such party, in good faith, has reason to believe is not known or available to the public, and which information such party believes to constitute proprietary, confidential and/or trade secret information relating to the producing party's business may, at the time of its initial disclosure, be designated by the producing party to be either (i)

"CONFIDENTIAL MATERIAL" or (ii) "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL", within the terms of this Protective Order by stamping or otherwise marking the MATERIAL with the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY" (hereinafter "LEGEND"), whichever LEGEND is appropriate.

2. Any deposition transcript or trial testimony or portion thereof designated as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL is to be bound separately by the Court Reporter, and any responses to interrogatories, document requests, or requests for admission designated as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL are to be served separately. The designation of CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL regarding information and/or testimony contained in a deposition or in trial testimony may be made at the time of the deposition or testimony or by written notification of the adverse party within fourteen (14) days of receipt of the deposition transcript or trial testimony transcript of those portions of the transcript containing CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL. Notwithstanding the foregoing, for transcripts of depositions that occurred prior to the effective date of this Order, those portions of testimony that were identified during the deposition as being confidential shall be deemed to be subject to this Order without any further designation or other action.

"Confidential Material"

3. MATERIAL designated as CONFIDENTIAL MATERIAL and all copies, abstracts, summaries or information derived therefrom, and all notes or other records regarding the contents thereof, shall be maintained in confidence by the person to whom such materials are produced or disclosed, and shall not be disclosed to any person except:

(A) outside counsel of record to the parties to this proceeding, and the legal associates and clerical and other support staff who are employed by such counsel and who are actually involved in assisting counsel in the prosecution or defense of this action;

(B) the Board, any subsequent Appellate body to whom an appeal is taken in this matter, and any Court before whom a dispute concerning this agreement or its enforcement is brought;

(C) the party herself (if an individual), and those directors, officers, trustees and employees of the parties or of the parties' related companies, who are actually involved in assisting counsel in the prosecution or defense of this action;

(D) independent experts and their employees retained by any of the parties to this action or their counsel who are assisting counsel in the prosecution or defense of this action; and

(E) any other person agreed to by the parties or allowed by the Board.

CONFIDENTIAL MATERIAL, and any information contained in any CONFIDENTIAL MATERIAL, shall not be made available to, or in any manner revealed to or discussed with, anyone except as provided above in this paragraph 3. This provision pertains to disclosure by the party receiving CONFIDENTIAL MATERIAL and does not limit the disclosure of CONFIDENTIAL MATERIAL by the producing party.



"Highly Confidential/Attorney's Eyes Only Material"

4. MATERIAL that the disclosing party has reason to believe, in good faith, consists of or contains especially sensitive information, including but not limited to, sales, marketing, and business strategy and planning information and design or technical data, may be designated HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL. All HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, and all copies, abstracts, summaries or information derived therefrom, and all notes or other records regarding the contents thereof, shall be maintained in confidence by the person to whom such materials are produced or disclosed, and shall not be disclosed to any person except:

(A) outside counsel of record to the parties to this proceeding, and the legal associates and clerical and other support staff who are employed by such counsel and who are actually involved in assisting counsel in the prosecution or defense of this action;

(B) the Board, any subsequent Appellate body to whom an appeal is taken in this matter, and any Court before whom a dispute concerning this agreement or its enforcement is brought; and

(C) any other person agreed to by the parties or allowed by the Board.

HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, and any information contained in any HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, shall be deemed for ATTORNEY'S EYES ONLY and, except as provided above in this paragraph 4, shall not be made available to, or in any manner revealed to or discussed with, anyone, including the receiving attorney's client(s) or any of the client(s)' employees. This provision pertains to disclosure by the party receiving HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY

MATERIAL and does not limit the disclosure of HIGHLY CONFIDENTIAL/ATTORNEY'S EYE ONLY MATERIAL by the producing party.

5. All CONFIDENTIAL MATERIAL and HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL shall be used solely for purposes of this proceeding and any appeal taken in this proceeding and for no other purpose, and persons having access to CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL shall not disclose or provide such information to any person not authorized to receive the same under this Protective Order.

6. Before CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL is disclosed to any persons identified, respectively, in categories (C), (D) or (E) of paragraph 3 or category (C) of paragraph 4 above, each such person shall signify assent to the terms of this Protective Order by executing, prior to receipt of such CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, whichever is applicable, an acknowledgment statement (in the form attached hereto) which indicates that he or she has read this Protective Order and agrees to be bound in all respects by its terms.

7. Counsel for the receiving party shall not disclose any HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL of the producing party to any person associated with the receiving party except as expressly provided in paragraph 4 of this Protective Order.

8. If any CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL is summarized, discussed or

otherwise used at any deposition, hearing, or the trial of this action, all persons other than stenographic personnel and those authorized hereunder to have access to the same, shall be excluded from such portion of the deposition, hearing, or trial of this action, unless the parties otherwise agree or the Board otherwise orders.

9. Any CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL filed with the Board shall be submitted separately and under seal and marked as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY", bearing the proceeding number, unless and until the parties otherwise agree or the Board otherwise orders.

10. Once participation in this action by any person obtaining such CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL pursuant to paragraph 3 or paragraph 4 above, whichever is applicable, has terminated or otherwise concluded, all CONFIDENTIAL MATERIAL and HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL in his or her possession shall be returned within thirty (30) days to counsel with whom he or she was associated or affiliated or from whom such person otherwise obtained such CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL.

11. Upon final disposition of this action, all CONFIDENTIAL MATERIAL and HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL held by the receiving party shall be returned to the producing party except for one copy, and except for any abstracts or summaries or other memoranda prepared by the persons identified in paragraph 3 or paragraph 4 above who obtained the CONFIDENTIAL MATERIAL or HIGHLY

CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL and any part of the official record which is or contains CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL. The parties agree that all retained CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, and any information contained therein, will continue to be treated as provided in this Protective Order and that such continuing obligation shall survive the final disposition of this action.

12. The restrictions set forth in the preceding paragraphs shall not apply to materials and information which, at or prior to disclosure thereof in this action, were known or had been independently developed by the discovering party or were public knowledge, or which, after disclosure thereof, become public knowledge other than by act or omission of the non-designating party, or its agents, experts and attorneys. No party hereto shall be bound by this stipulation and order as to any information which is possessed prior to this action, unless that information was obtained under circumstances requiring its treatment as confidential.

13. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his client with respect to this action, and in the course thereof, from generally referring to or relying upon the examination of documents produced or information revealed in deposition or trial transcripts. In rendering such advice or in otherwise communicating with his or her client, the attorney shall not disclose the specific content of any document or information designated as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY by a producing party.

14. The parties will use reasonable care to avoid designating any documents or

information as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, which contains knowledge generally available to the public.

15. Notwithstanding the foregoing, this Order shall be without prejudice to the right of any party to object to the production or inspection of any MATERIAL upon any other appropriate ground, and nothing contained herein shall be construed as a waiver of any objections which might be raised as to the admissibility in the relevant proceeding of any evidentiary MATERIAL. Furthermore, this Order shall not foreclose the parties from challenging, in good faith, in writing that MATERIAL labeled "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY" in accordance with the provisions of this Protective Order is, in fact, not confidential or highly confidential. If the parties are unable to agree within ten (10) business days whether or not such MATERIAL is confidential or highly confidential, whichever is applicable, the party challenging the designation of such MATERIAL as confidential or highly confidential shall move for an order from the Board that such MATERIAL is not CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL.

16. A failure of any party to challenge expressly the designation of any material as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL under this Order shall not be deemed as an admission that such material or any information contained herein is in fact non-public.

17. This Order is without prejudice to the right of any party to seek relief from the Board, upon good cause shown, from any of the restrictions provided above or for any other grounds provided by applicable law.

18. This Protective Order may be amended without leave of the Board by the agreement of counsel for the parties in the form of a Stipulation that shall be filed in this action.

19. Nothing in this Protective Order shall constitute:

(A) an agreement by the parties to produce any documents or supply any information or testimony in discovery not otherwise agreed upon or required by order of the Board;

(B) a waiver by any person or party of any right to object to or seek a further protective order with respect to any discovery request in this action; or

(C) a waiver of any claim of immunity or privilege with regard to any testimony, documents or information.

20. This Order may be executed in multiple counterparts.

21. The parties to this Protective Order consent to the jurisdiction of the Board, any subsequent Appellate body to whom an appeal is taken in this matter and the United States District Court for the District of New Jersey or, if jurisdiction in that court is unavailable, in State court in Somerset County, New Jersey for all matters concerning this Protective Order, including but not limited to the interpretation and enforcement thereof.

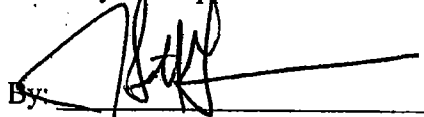
Dated: Raritan, New Jersey  
\_\_\_\_\_, 2006

BAKER AND RANNELLS, PA  
Attorneys for Opposer

By: \_\_\_\_\_  
Stephen L. Baker  
Brian M. Gaynor  
626 North Thompson Street  
Raritan, New Jersey 08869  
(908) 722-5640

Dated: Napa, California  
June 20, 2006

DICKENSON, PEATMAN & FOGARTY  
Attorneys for Applicant

By: 

J. Scott Gerien  
809 Coombs Street  
Napa, California 94559  
(707) 252-7122

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

\_\_\_\_\_  
BULLY HILL VINEYARDS, INC.

Opposer,

v.

A DONKEY AND GOAT, LLC

Applicant.  
\_\_\_\_\_

Cancellation No. 91167963

Mark: A DONKEY AND GOAT

Ser. No. 78500649

**ACKNOWLEDGMENT**

I, \_\_\_\_\_ [print name], declare that I have been provided with a copy of the Agreement or Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition proceeding before the Trademark Trial and Appeal Board.

I have read the Agreement or Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding.

I declare under the penalty of perjury that these statements are true and correct.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Title, If Applicable]



## **EXHIBIT 4**

## Scott Gerien

---

**From:** Scott Gerien  
**Sent:** Saturday, July 15, 2006 11:29 AM  
**To:** 'b.gaynor@br-tmlaw.com'  
**Subject:** Opposition No. 91167963 Bully Hill Vineyards, Inc. v. A Donkey and Goat, LLC

Brian:

I note that you have not yet filed the stipulated protective order in this matter which we sent to you some weeks ago. Please let me know if you have not received it.

Similarly, we have not yet received your client's documents responsive to our document requests served in January. As you know, we have outstanding discovery responses due and we will be withholding production of documents until we first receive your client's document production.

Our client will continue to defend this action in light of the obvious absence of any likelihood of confusion and the evidence of extensive third party use of the term "GOAT" in marks for wine and your client's consent to, and knowing allowance of such uses.

Furthermore, based on what appears to be an effort to simply bully our client into submission, we believe that once our client prevails before the TTAB, there will be a clear basis for a malicious prosecution claim against your client and your firm under California law.

We look forward to the receipt of your client's documents and the filing of the stipulated protective order.

Sincerely,  
Scott

J. Scott Gerien  
Dickenson Peatman & Fogarty  
809 Coombs Street  
Napa, California 94559-2799  
Phone: 707-252-7122  
Fax: 707-255-6876  
sgerien@dpfnapa.com